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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057244
Party	Plaintiff Bracket Global, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 4,005,254  
For the Mark: ENDPOINT  
Registered on August 2, 2011

BRACKET GLOBAL, LLC,

Petitioner

v.

ENDPOINT CLINICAL, INC.,

Registrant.

Cancellation No. 92057244

**AMENDED PETITION FOR CANCELLATION**

Petitioner, Bracket Global, LLC, a Delaware Limited Liability Company, having its principal place of business at 575 Swedesford Rd., Suite 200, Wayne, PA 19087, believes that it is, or will be, damaged by Registration No. 4,005,254 for the mark ENDPOINT, registered on the Principal Register on August 2, 2011, for computer services, namely, providing a web-based system and on-line portal featuring on-line non-downloadable software that enables users to access information related to clinical trials in the field of medicine, and hereby petitions for cancellation of same.

As grounds for cancellation, it is alleged that:

1. Petitioner is a Delaware Limited Liability Company, having its principal place of business at 575 Swedesford Rd., Suite 200, Wayne, PA 19087.

2. Upon information and belief, Registrant, Endpoint Clinical, Inc., is a Delaware corporation with a principal place of business at 55 Francisco St., Suite 405, San Francisco, CA 94133.
3. Registrant has obtained a registration for ENDPOINT for computer services, namely, providing a web-based system and on-line portal featuring on-line non-downloadable software that enables users to access information related to clinical trials in the field of medicine, in international class 42.
4. Petitioner submits that there are two alternative grounds for cancelling Registration No. 4,005,254, namely: 1) that the term “endpoint” is merely descriptive of or generic of a characteristic of Registrant’s services in the field of clinical trials; and 2) that Petitioner’s first use of the mark ENDPOINT RELIABILITY predates the use of ENDPOINT by Registrant.
5. The term “endpoint” is extensively used in the field of clinical trial services and is therefore generic and/or merely descriptive for services related to the field of clinical trial services. As such, no one is entitled to exclusive rights to use the term “endpoint” to describe services in the field of clinical trials.<sup>1</sup>
6. Petitioner filed a trademark application on August 6, 2012 for the mark ENDPOINT RELIABILITY, Application Serial No. 85695656, for business consulting and management in the field of clinical trials, namely, management

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<sup>1</sup> Indeed, Petitioner was required to disclaim “endpoint” apart from the mark as shown during the examination of its ENDPOINT RELIABILITY trademark application. In requiring the disclaimer, the Examining Attorney noted: “In this case, the word ‘ENDPOINT’ is merely descriptive of a characteristic of applicant’s services in the field of clinical trials. Specifically, the attached dictionary and encyclopedia evidence demonstrates that “ENDPOINT” or “end point” is merely descriptive terminology in the field of clinical trials that refers to something that is measured in clinical trials, such as survival rates, response rates, or the occurrence of a symptom or sign that is one of targeted outcomes of the trial.”

and compilation of computerized databases in the field of clinical trials for business purposes; providing an internet-based database designed to monitor and provide real time feedback and guidance related to clinical trials, in international class 35; and medical and scientific research, data collection and analysis in the nature of clinical research and clinical trials in the fields of health care, medical care and pharmaceutical use, in international class 42. Petitioner has since amended its services as follows: business consulting and management in the field of clinical trials, namely, management and compilation of computerized databases in the field of clinical trials for business purposes; providing an internet-based database for business purposes designed to monitor and provide real-time feedback and guidance related to clinical trials, in international class 35; and Medical and scientific research, data collection and analysis in the nature of clinical research and clinical trials in the fields of health care, medical care and pharmaceutical use; providing an internet-based database for pharmaceutical research and development purposes designed to monitor and provide real-time feedback and guidance related to clinical trials, in international class 42.

7. Prior to December 1, 2009, Registrant's alleged date of first use, Petitioner used the term "endpoint" as part of its ENDPOINT RELIABILITY mark in connection with business consulting and management in the field of clinical trials and medical and scientific research, data collection and analysis in the nature of clinical research and clinical trials in the fields of health care, medical care and pharmaceutical use; providing an internet-based database for pharmaceutical

research and development purposes designed to monitor and provide real-time feedback and guidance related to clinical trials. Such services are extensively provided in the same market area as the services sold or offered for sale by Registrant.

8. Petitioner has developed extensive goodwill for its services using a mark which includes the term “endpoint” in connection with its “ENDPOINT RELIABILITY” mark. Petitioner has spent considerable sums of money in advertising and promoting its services which relate to clinical trials that have an “endpoint.”
9. If anyone can develop superior rights in the term “endpoint” in connection with services that relate to clinical trials, Petitioner, as the first user, has superior rights to those of Registrant.
10. Based on information and belief, Registration No. 4,005,254 for the mark ENDPOINT was fraudulently obtained by Registrant, because Registrant knew of others (including, but not limited to, Petitioner) that were previously using the term “endpoint” in connection with services related to clinical trials. Registrant was also aware that the term “endpoint” is generic and/or merely descriptive of the services being offered for sale. In addition, Registrant knew or should have known of Petitioner’s earlier adoption of a mark including “endpoint” for software and/or databases in the field of clinical trials.

11. Unless Registrant's mark is cancelled Petitioner will be damaged, as Petitioner's Application Serial No. 85695656 has been refused registration on the grounds of likelihood of confusion with Registration No. 4,005,254.
12. Since at least as early as May, 2009, which is prior to Registrant's alleged first use date of December, 1, 2009, Petitioner is and has been engaged throughout the United States in continuous interstate trade, advertising, and rendering of services under the mark ENDPOINT RELIABILITY.
13. By virtue of Petitioner's services having been advertised and rendered under the mark ENDPOINT RELIABILITY continuously since May 2009, Petitioner has created widespread goodwill under its mark to the point where the public has come to recognize ENDPOINT RELIABILITY as signifying the Petitioner and Petitioner's services.
14. Registrant's mark ENDPOINT is confusingly similar to Petitioner's mark ENDPOINT RELIABILITY, and the registration and use by Registrant of the mark ENDPOINT on services that are within the scope of protection of Petitioner's services and within the same channels of trade, is likely to cause confusion, deception, diversion of business, damage to goodwill, loss of control over reputation and mistake, all to Petitioner's damage unless the Registrant's trademark registration is canceled.
15. The continued existence of Registration No. 4,005,254 places a cloud on Petitioner's trademark by misleading the public into believing that the exclusive

rights in Petitioner's ENDPOINT RELIABILITY mark may reside with the Registrant.

WHEREFORE, Petitioner, Bracket Global, LLC prays that its petition is granted and that Registration No. 4,005,254 is cancelled.

Respectfully submitted,



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Attorneys for Petitioner

Certificate of Service

I hereby certify that a copy of the foregoing paper was served by email and first-class mail, postage prepaid, upon Registrant identified in Registration No. 4,005,254, namely, Endpoint Clinical, Inc., through Registrant's attorney, Matthew D. Francis, Watson Rounds, 5371 Kietzke Lane, Reno, NV 89511, [mfrancis@watsonrounds.com](mailto:mfrancis@watsonrounds.com) this 12<sup>th</sup> day of June, 2013.

A handwritten signature in black ink, appearing to read "Nancy Rubner Frandsen", written in a cursive style.

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Nancy Rubner Frandsen